

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Case No. 05-Cr-90

WILLIAM STAPLES,

Defendant-Movant.

DECISION AND ORDER

Pro se Defendant Movant William Staples filed a motion labeled as a “motion under 18 U.S.C. § 3582(c)(A)(i)” (ECF No. 85). He requests resentencing or immediate release based on *Johnson v. United States*, 135 S.Ct. 2551 (2015), which held that the residual clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(ii), is unconstitutionally vague.

Despite its titling, Staples’ motion is actually a motion for § 2255 relief. It is also his fourth successive § 2255 motion. Moreover, Staples asked the Seventh Circuit Court of Appeals for permission to file a successive petition raising the issue; the request was denied because Staples’ sentencing enhancement did not rely on the residual clause of the ACCA and, thus, is legal even after *Johnson*. See *William Staples v. United States of America*, No. 15-2748 (7th Cir. Aug. 25, 2015). The

appeals court also noted that Staples had not paid the \$500 fine it had imposed in *William Staples v. United States of America*, No. 15-1596 (Mar. 25, 2015),¹ and, thus, remains subject to the filing bar.

There are indications that the title of Staples' motion is a subterfuge. Regardless, because Staples may not file any collateral attacks until his fine is paid, Staples' May 25, 2016, successive § 2255 motion will not be filed as a civil action. Additionally, Staples' sentence is legal even after *Johnson*. Based on the foregoing, Staples' motion (ECF No. 85) is frivolous and, therefore, is **DISMISSED**. A courtesy copy of this order is being mailed to the Court of Appeals for the Seventh Circuit.

SO ORDERED at Milwaukee, Wisconsin, this 9th day of June, 2016.

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge

¹ *Staples*, No.15-1596, denied Staples' third request for authorization to file a successive motion to vacate his conviction, imposed the \$500 fine, and required that any papers attacking Staples' current criminal judgment, including future collateral attacks, to be returned unfiled.